

6P1763



GUNNISON, McKAY & HODGSON, L.L.P.

GARDEN WEST OFFICE PLAZA, SUITE 220

1900 GARDEN ROAD

MONTEREY, CALIFORNIA 93940

(831) 655-0880

FACSIMILE (831) 655-0888

June 18, 2003

RECEIVED
JUN 26 2003
TC 1700

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL LETTER

RE: Applicant(s): Gary M. Moore

Assignee: Moore Epitaxial Inc.

Title: GAS FLOW CONTROLLER SYSTEM

Serial No.: 09/399,611 Filed: September 20, 1999

Examiner: Bueker, R. Group Art Unit: 1763

Docket No.: MTEC1010

Dear Sir:

Transmitted herewith are the following documents for the response to the Office Action dated May 29, 2003 in the above application:

1. Return Receipt Postcard;
2. Transmittal Letter (2 pages); and
3. Response to Restriction Requirement (3 pages).

Transmittal Letter
Serial No. 09/399,611

June 18, 2003

☒ No additional claims fees are required.

CLAIMS AS AMENDED

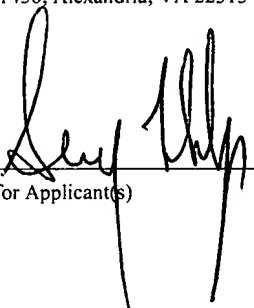
	Claims Remaining after Amendment	Highest No. Previously Paid For	Pres ent Extr a	Rate	Additional Fee
Total Claims	19	- 34	= 0	x \$18.00	\$ 0.00
Independent Claims	7	- 8	= 0	x \$84.00	\$ 0.00
First filing of Multiple Dependent Claim (Enter \$270)					0.00
Total of above Calculation					\$0.00
Reduction by 50% for filing by Small Entity (Enter 0.5 for small entity)					1.0
Subtotal					\$ 0.00
Submission of Information Disclosure Statement Fee (enter \$180)					0.00
TOTAL					\$ 0.00

☒ Conditional Petition for Extension of Time: If an extension of time is required for timely filing of the enclosed documents after all papers filed with this transmittal have been considered, Applicant(s) hereby petition for such an extension of time.

☒ The Commissioner is hereby authorized to charge any additional fees required for consideration of the enclosed documents, and to credit any overpayment of fees to Deposit Account No. 50-0553.

CERTIFICATE OF MAILING

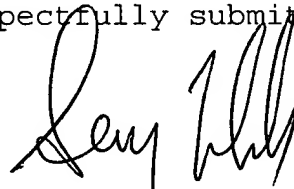
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on June 18, 2003.



Attorney for Applicant(s)

June 18, 2003
Date of Signature

Respectfully submitted,



Serge J. Hodgson
Attorney for Applicant(s)
Reg. No. 40,017

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Gary M. Moore
Assignee: Moore Epitaxial Inc.
Title: GAS FLOW CONTROLLER SYSTEM
Serial No.: 09/399,611 Filed: September 20, 1999
Examiner: Bueker, R. Group Art Unit: 1763
Docket No.: MTEC1010

Monterey, CA
June 18, 2003

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

#17
6/26/03
MW

RESPONSE TO RESTRICTION REQUIREMENT

Dear Sir:

This is in response to the Office Action dated May 29, 2003.

The Examiner is requiring restriction to one of the following inventions under 35 U.S.C. 121:

I. Claims 1-11, 35, drawn to an apparatus having a gas manifold located at a processing unit; and

II. Claims 22, 25-28, 36-37, drawn to a mixer having one inlet port coupled to two gas sources.

Applicant hereby elects, with traverse, to prosecute Group I, Claims 1-11 and 35. The election is made with traverse since the Examiner has already issued substantive Office Actions on all the claims and thus has failed to show that

examination of all the claims would present a serious burden on the Examiner.

Specifically, MPEP § 803, entitled "Restriction-When Proper", sets forth:

There are two criteria for proper requirement for restriction between patentably distinct inventions:

(A) ...; and

(B) **There must be a serious burden on the examiner if restriction is required ...** (pg. 800-4, August 2001, emphasis added.)

The Examiner asserts:

Because these inventions are distinct for the reasons given above **and have acquired a separate status in the art because of their recognized divergent subject matter**, restriction for examination purposes as indicated is proper. (Office Action, page 3, emphasis added.)

The Examiner's statement is respectfully traversed. MPEP § 803 further sets forth:

For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown **if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02.**

That *prima facie* showing **may be rebutted by appropriate showings or evidence by the application.** (pg. 800-4, August 2001, emphasis added.)

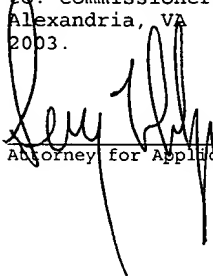
Applicant notes that the United States and Patent Trademark Office has already issued two substantive Office Action dated January 19, 2001 and July 3, 2001 on all pending claims. This demonstrates a lack of a serious burden on the Examiner to examine all pending claims. Further, in the June 18, 2002 Notice of Allowability, all pending claims (i.e., Claims from **both** Groups I and II) were found allowable. Applicant submits that the Examiner is requiring cancellation of claims that have already been examined and found to contain allowable subject matter. Accordingly, restriction is not

proper and Applicant hereby requests reconsideration and withdrawal of the restriction requirement.

If the Examiner has any questions relating to the above, the Examiner is respectfully requested to telephone the undersigned Attorney for Applicant(s).

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on June 18, 2003.

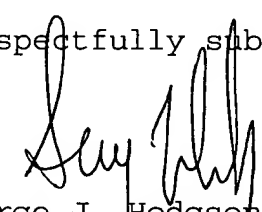


Attorney for Applicant(s)

June 18, 2003

Date of Signature

Respectfully submitted,


Serge J. Hodgson
Attorney for Applicant(s)
Reg. No. 40,017
(831) 655-0880